No. 16515

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

A. J. BUMB, Trustee in Bankruptcy of the Estate of Ampsco Products of California, Inc., Bankrupt,

Appellant,

vs.

L. E. McINTYRE and M. H. McINTYRE, doing business as L. E. McIntyre & Co.,

Respondents.

RESPONDENTS' ANSWERING BRIEF.

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Statement of the Case.

The respondents on appeal are L. E. McIntyre and M. H. McIntyre, doing business as L. E. McIntyre & Company. L. E. McIntyre & Company claims the position of a secured creditor of the bankrupt estate of Ampsco Products of California, Inc. by reason of a valid chattel mortgage executed prior to bankruptcy. The undisputed facts are that on May 25, 1956 Ampsco Products of California, Inc. executed a chattel mortgage to L. E. McIntyre & Company which was duly published and recorded in all respects. Subsequently on August 13, 1957, Ampsco Products of California, Inc. made a general assignment for the benefit of creditors to Ralph Meyer. The assignee then sold all the assets of the bankrupt corporation to a third party for $28,775.00. An involuntary Petition in Bankruptcy was filed on October 28, 1957. An

Order of Adjudication was entered and the assignee paid over all funds in his possession to the trustee in bankruptcy. Repondents filed a petition for an order to show cause requiring the trustee to show cause why he should not be substituted as a party defendant instead of the bankrupt. The trustee filed his answer and counterclaimed that the mortgage was unenforceable as against him on the principal ground that the description of the property mentioned in the mortgage was legally inadequate. The issue as to the validity of the chattel mortgage was tried before the Referee in Bankruptcy on March 10, 1958. The respondents' evidence showed, and the Referee found, the following facts:

1. That for valuable consideration the bankrupt corporation executed and delivered to L. E. McIntyre & Company a note and chattel mortgage by means of an escrow accomplished at the Security-First National Bank of Los Angeles.

2. That a Notice of Intended Mortgage with respect to said mortgage was duly executed, recorded and published.

3. That an inventory list of all the specific items of personal property covered by the executed mortgage had been deposited in said escrow file along with the executed mortgage. However, the inventory list was not actually attached to said mortgage.

4. That the words used in the chattel mortgage to describe the property mortgaged were sufficiently definite and certain to satisfy California law. The Referee held ". . . the description as given on the mortgage [is in itself] self sufficient," [Tr. p. 59] and "If there is any insufficiency of description, the exact description can be ascertained by information disclosed in the instrument itself." [Tr. p. 62.]

Appellant petitioned the United States District Court for review of the Referee's decision upholding respondents' position as a secured creditor. Appellant's primary ground for contesting the Referee's Ruling was that the Referee had not correctly applied California law. The briefs filed in the District Court contained an exhaustive compilation of the California statutory and case authority on the question whether respondents' chattel mortgage contained a sufficient description of the property mortgaged to satisfy California law. The District Court found that respondents' chattel mortgage was valid in all respects and affirmed the Referee's decision and adopted in full the findings of fact, conclusions of law and order of the Referee. [Tr. 28-30.] The appellant has appealed this decision of the District Court. Respondents urge that the District Court's decision was correct in all respects and therefore should be affirmed.

Issues on Review.

The question before the District Court was the correctness of the Referee's Ruling that the description in the chattel mortgage executed by the bankrupt was sufficient to bind the Trustee under California law. The District Court upheld the Referee's decision in all respects and adopted the Referee's findings of fact, conclusions of law and order as its own. Therefore the only issues before this appellate court are (1) were the Referee's findings of fact supported by any substantial evidence, and (2) did the Referee and the United States District Court correctly apply California law.

ARGUMENTS AND LAW.

POINT I.

There Was Substantial Evidence to Support the Finding by the Referee That the Description of Property Contained in the Mortgage Satisfied California Law.

The findings of fact of the Referee must be accepted unless they are clearly erroneous. Therefore, if there is any substantial evidence to support the Referee's findings, said findings must be affirmed. *In Re Collins* (S. D. Calif. 1956), 141 Fed. Supp. 25.

Appellant objects to all of the Referee's findings of fact in his Specification of Errors No. 2 on page 5 of his brief. However, with the exception of Finding No. 6, the Referee's findings of fact contain matter which has been either stipulated to by the parties or admitted to be correct by appellant himself either in his statement of the facts or elsewhere in his brief. Therefore, it will be assumed that the only finding of fact to which the appellant really objects is Finding number 6 which states: "The description of the property contained in the said Mortgage of Chattels, as recorded, is sufficiently definite and certain to enable third parties, aided by inquiries which the instrument itself suggests, to identify the property covered thereby." [Tr. p. 17.] From reading the Reporter's Transcript it is clear that there was substantial and uncontradicted evidence to support said finding. A copy of the mortgage instrument itself was offered in evidence and from it a creditor could determine the exact location of the chattels mortgaged [Tr. p. 59], the name and address of the mortgagor and its officers [Tr. p. 62] and the name of the mortgagee and its address. Further, there was much evidence produced which showed that an

escrow had been set up at a certain branch of the Security-First National Bank of Los Angeles to handle the transaction between respondent and the bankrupt and that a notice to this effect had been properly published. Further evidence was introduced that a complete list of all the chattels mortgaged was included in and made a part of the escrow file in said bank. The Referee based his findings on all the above evidence in ruling:

> "You have a very definite address—'224 East Palmer Avenue, in the City of Compton, State of State of California.' An inquiry at that address would have led to the escrow, and the escrow had the detailed description of the mortgaged property in its file, and that description is identified in the supplemental escrow instructions. This exhibit 'McIntyre's No. 3' is captioned 'Inventory,' and the inventory is referred to in the supplemental instructions, so that you have the whole thing. I say I go along as far as counsel goes, but I go farther. On behalf of the mortgagor the mortgage was executed by its president and its vice president, and inquiry at the address given would have led to one or the other or both of these men, who again, could have said, 'There is an escrow and in that escrow you will find the detailed description.' " [Tr. p. 62.]

It is therefore clear that there was substantial evidence to support the Referee's finding that a reasonable creditor, aided by inquiries which the chattel mortgage instrument itself suggested, would be able to identify the property covered by the mortgage and said finding should therefore be affirmed.

POINT II.

Finding of Fact Number 6 Is a Proper Finding of Fact in All Respects.

Appellant, on page 7 of his brief, claims that finding of fact number 6 is actually a conclusion of law. This contention is without merit. Findings of fact are necessarily findings of ultimate facts. The ultimate fact involved here is whether there was sufficient information in the mortgage instrument to make it possible for a reasonable creditor upon inquiry at sources suggested by the instrument to determine the chattels which were subject to the mortgage. A conclusion of law, on the other hand, is based on the finding of an ultimate fact and is the legal conclusion reached as a result of said finding, *e.g.,* that because a reasonable creditor could determine the property mortgaged from sources of information suggested in the instrument, therefore the chattel mortgage is enforceable under California law as against the trustee in bankruptcy. [See Concl. of Law No. 2, Tr. p. 18 for said conclusion of law resulting from Finding of Fact No. 6.] Since Finding number 6 does not contain a statement relating to the legal effect of the ultimate facts found therein, it is not in reality a conclusion of law as appellant contends, but is a proper finding of fact.

Levins v. Rovegno, 71 Cal. 273 (1886); Witkin, *California Procedure,* Vol. 2, p. 1843.

POINT III.

Since by "Describing the Property" the Mortgage Instrument Did Substantially Comply With the Requirements of Civil Code, Section 2956, Any Doubt as to the Technical Requirements of This Statute Should Be Resolved in Favor of the Party Which Has the Equities on His Side.

On page 8 of Appellant's Brief, *Kahriman v. Jones,* 203 Cal. 254 (1928), is cited for the proposition that the provisions of the Civil Code, Section 2956, *et seq.,* relating to chattel mortgages, should be "strictly construed." Respondents urge that this statement in *Kahriman v. Jones* should be limited to the facts before that court. Civil Code, Section 2956 sets forth certain minimum requirements for a valid mortgage: it must be clearly entitled, it must contain the names of the parties, a description of the property mortgaged and, prior to 1935, the amount of money due and the date said money is due. *Kahriman v. Jones, supra,* was decided prior to 1935 and the due date was completely absent from the face of the mortgage instrument. The court held that since information required by the statute to be in the mortgage instrument was totally lacking, the statute should be "strictly construed" and the mortgage was therefore held invalid as against creditors. However, the mortgage instrument in the case at bar complied with all of the minimum requirements of Section 2956 including a description of the property. In such a case, any doubts about the technical requirements of the statute should be resolved in favor of the party with the

equities on his side. As the Referee and District Court held: where "a technical statute is involved such as we have here, and a proceeding such as we have here, the doubt must be resolved in favor of the one who has the equitable side of the case, which in this case is the mortgagee." [Tr. p. 60.]

POINT IV.

The Equities Are on the Side of the Mortgagee in a Proceeding to Determine Whether the Mortgagee Shall Be Deprived of Security for Which He Gave Valuable Consideration.

In this case the equities are clearly on the side of the mortgagee, L. E. McIntyre & Company. L. E. McIntyre & Company gave valuable consideration for the promissory note and chattel mortgage of Ampsco Products of California, Inc. Respondents' company would not have entered into the agreement without security since Ampsco Products of California, Inc.'s financial condition was known to be insecure. The only way Ampsco Products of California, Inc. could therefore have obtained new capital was through a secured indebtedness. Where the mortgagee has clean hands and is completely fair in all the transactions related to said mortgage, and every effort is made to comply with California law, including proper publication of notice and recordation, there is a strong policy to allow respondents to enforce their secured position. Any grounds for denying respondents their secured position must be *more* substantial than the mere technicalities or tenuous arguments presented by appellant.

POINT V.

California Case Law Supports Respondents' Contention That the Description of Property in the Chattel Mortgage at Bar Was Fully Adequate.

The description in the chattel mortgage at bar was fully adequate under all California cases and statutory law. The only California statute dealing with the formal requirements of a chattel mortgage is Civil Code, Section 2956 which provides:

> "A mortgage of personal property or crops shall be clearly entitled on the face thereof, apart from and preceding all other terms of the mortgage, to be a mortgage of crops and chattels, or either, and such mortgage may otherwise be made in substantially the following form:
>
> This mortgage, made the .... day of ....., in the year ....., by A B, of....., mortgagor, to C D, of ....., mortgagee, witnesseth:
>
> That the mortgagor mortgages to the mortgagee (here describe the property), as security for the the payment to him of ..... dollars, on (or before) the .... day of ....., in the year ....., (or, as security for the payment of a note or obligation, describing it, etc.) A B.
>
> No mortgage of personal property or crops shall be invalid for any purpose by reason of the omission to state therein the interest rate or the due date or due dates of the obligation or obligations secured thereby."

The chattel mortgage in question is in the following form:

"Mortgages of Chattels

This Mortgage, Made the 25th day of May, in the year 1956 By Ampsco Products of California, Inc. of Los Angeles County, State of California, Mortgagor, To L. E. McIntyre & Company, a Partnership of Los Angeles County, State of California, Mortgagee, Witnesseth: The Mortgagor mortgages to the Mortgagee all that certain personal property situated and described as follows, to-wit: Certain fixtures, machinery and tooling equipment, and located at 224 East Palmer Avenue, in the City of Compton, State of California, as security for the payment to said mortgagee of the promissory note, and the interest thereon, executed by the mortgagor in favor of the mortgagee, dated May 25, 1956 for $27,500.00 . . . [then there appeared ten paragraphs of further terms of this mortgage agreement]. . . . In Witness Whereof, the Mortgagor has executed this instrument.

Ampsco Products of California, Inc.
By: /s/ H. W. Aikins, President
By: /s/ John E. Bredbeck, Vice Pres.
/s/ Harvey Aikins
/s/ Mrs. Harvey Aikins

Notarial Seal

After recording mail to
L. E. McIntyre & Company
5132 Duarte Street
Los Angeles, California"

Note that every requirement of Section 2956 has been substantially complied with by the chattel mortgage at bar. However, appellant contends that the description of property in said chattel mortgage is not sufficient to satisfy California law. In determining the merit of appel-

lant's claim this court is required to look to California law. *In re Driscoll,* 127 Fed. Supp. 81 (1954). [In the *Driscoll* case it was held: "Whether and to what extent a mortgage of this kind is valid, is a local question, and the decision of the state court will be followed by this court in such a case."]

There are many cases decided under California law which deal with the question of the adequacy of descriptions in chattel mortgages. Since California law is clear, and since there is no case, new or old, which indicates that the description in the respondents' mortgage is in any way difficient, there will be no attempt in this brief to restate all of said cases and their holdings. Only those California cases which are most directly in point with our fact situation will be dealt with here.

Pacific National Agricultural Credit Corp. v. Wilbur, 2 Cal. 2d 576 (1935), states the California rule by quoting from 11 C. J. 457, as follows:

> "'As against third persons the description in the mortgage must point out the subject-matter so that such persons may identify the chattels covered, *but it is not essential that the description be so specific that the property may be identified by it alone, if such description suggests inquiries or means of identification which, if pursued, will disclose the property covered.* This rule is based upon the maxim, that is certain which is capable of being made certain. So a description is sufficient if it may be aided by parol proof and the property covered by the mortgage identified.'" (Emphasis added.)

In re Driscoll, supra, is the controlling Federal District Court case in this District, dealing with the sub-

ject of description. In that case, the chattel mortgage listed a number of items of restaurant equipment, in many instances with serial numbers, model numbers, manufacturers' names, dimensions, colors, and materials of which constructed. The Referee had held that the chattel mortgage was void as against the Trustee for the sole reason that it failed to state the location of the property referred to therein. The District Court reversed the Referee, and cited *Pacific National Agricultural Credit Corp. v. Wilbur, supra,* quoting therefrom, as follows:

> " 'As against third persons the description in the mortgage must point out the subject-matter so that such persons may identify the chattels covered, but it is not essential that the description be so specific that the property may be identified by it alone, if such description suggests inquiries or means of identification which, if pursued, will disclose the property covered.' "

In *In re Driscoll,* the Court cited with approval *Pacific States Savings & Loan Co. v. Hoffman,* 134 Cal. App. 604 (1933) and *John Breuner Co. v. King,* 9 Cal. App. 271 (1908). The court then said:

> "Inclusion of the address where the mortgaged property is located is for obvious reasons the better practice. *Ordinarily 'a statement as to the location of the chattels mortgaged is one of the most important elements in the description.' . . .*" (Emphasis added.)

In *John Breuner Co. v. King, supra,* the following description was held to be sufficient:

> " 'All the furniture, upholstery, carpets, draperies, chinaware and other household goods of every kind,

> located and contained in and about that certain building, in said City and County of San Francisco, known as the 'Haddon Hall Apartment House,' and also known as No. 951 Eddy Street, said building being situated on the lot on the south side of Eddy Street, 68 feet 9 inch front, 120 feet deep, and commencing 137½ feet easterly from the southeast corner of Gough and Eddy Streets.' "

The case *Pacific States Savings and Loan Company v. Hoffman, supra,* is squarely in point with the case at bar. The chattel mortgage described the property as "all that certain personal property situated and described as furniture and furnishings contained in the property situate on the northeast corner of Grace and Franklin avenues, Los Angeles, California."

Against the claim of a party not the mortgagor, who apparently was a third party without notice, the court held that the description was valid, quoting from 5 Cal. Jur., p. 54, as follows:

> " 'It has been held that a description is sufficient if it is such as to enable third parties or inquirers to identify the property covered by it.' "

From the foregoing authorities, it is clear that the following principles of California Law apply in determining the sufficiency of a description in a chattel mortgage:

1. That there is no fixed rule as to what factors must be included in a description, except that it must be sufficient to enable third parties upon inquiry to identify the property covered;

2. In order for the mortgage to be valid, the description need not be so definite that the specific property may be identified by reference to the chat-

tel mortgage alone, provided that the chattel mortgage contains sufficient information to enable third parties upon inquiry to identify it;

3. However, the location of the property by street address, or other specific identification of location, is an important element in the description, and, if the description contains such location, a more specific designation of the property is not required. (*In re Driscoll, supra.*)

4. A chattel mortgage covering all of a certain type of property at a given street address, in a given city, is clearly sufficient to render the chattel mortgage valid as against third parties. (*Pacific States Savings and Loan Company v. Hoffman, supra.*)

It will be noted that in *In re Driscoll, supra,* the description did contain serial numbers, model numbers, manufacturers' names and descriptions in a number of instances, but it apparently did not state the location of the property by a street address. Nevertheless, the chattel mortgage was held valid. The court specifically recognized the California rule that the statement of the address where the mortgaged property is located is one of the most important elements of the description. This is a clear recognition of the soundness of *Pacific States Savings and Loan Company v. Hoffman, supra,* which held that a description covering all of that certain personal property situated and described as furniture and furnishings contained in the property situated at a specific address is a sufficient description.

Certainly, if the descriptions in the cases above cited were held to be sufficient to enable third parties or inquirers to identify the property covered by the chattel

mortgages, then the description in the case at bar was sufficient to enable such third parties to identify the property covered.

The evidence showed that the chattel mortgage was executed, recorded and delivered through an escrow at the Security-First National Bank of Los Angeles; that a Notice of Intended Mortgage was published and recorded through the escrow, as required by California law; and that the mortgagor and mortgagee initialled and deposited in the escrow a detailed inventory of the items of furniture and fixtures which were covered by the chattel mortgage. Clearly, any inquiry by third parties would have enabled them to identify the property. An inquiry of the mortgagee, or mortgagor or at the address stated in the description would undoubtedly have revealed a specific description of the property, or would have led to the escrow, which contained such specific description. A reference to the Notice of Intended Mortgage, as published and recorded, likewise would have led to the escrow. The Referee correctly ruled:

> "You have a very definite address—'224 East Palmer Avenue, in the City of Compton, State of California.' An inquiry at that address would have led to the escrow, and the escrow had the detailed description of the mortgaged property in its file, . . . and the inventory is referred to in the supplemental escrow instructions, so that you have the whole thing." [Tr. pp. 34-35.]

Therefore *if the inquiry rule is followed, as required by all the California cases, and by the Federal District Court cases in this District, then the only possible result is that the chattel mortgage did contain sufficient information to comply with the rule.*

POINT VI.

The Case of Witt v. Milton Adds Nothing to the Rules Already Stated.

On page 17 of his Brief Appellant cites "the most recent case . . . *Witt v. Milton,*" 147 Cal. App. 2d 554 (1957). The case has nothing new to add. The description of the property in the mortgage instrument only listed "certain quantities of beds, bedding, furnishings and furniture." *No location or place of business was listed.* The court held correctly that such description was inadequate. However, in the case at bar the description states the street, address, city and state. In *In re Driscoll, supra,* held that inclusion of the address where the mortgaged property is located ". . . is one of the most important elements in the description." And further, "Significant, too, in reviewing California's statutory scheme for chattel mortgages, is the fact that the Code specifically provides with respect to mortgages of 'animate chattels' that the description shall be adequate if *inter alia* there be stated 'the place where the same will be ordinarily located while it is owned by the mortgagor.' C. C., section 2977." Therefore, the result in *Witt v. Milton, supra,* is easily distinguishable from our case. The fact that *Witt v. Milton, supra,* adds nothing new to the rules already set out further accentuates the fact that there is *no case,* old or new, which in any way indicates that the description in the McIntyre mortgage is in any way inadequate.

POINT VII.

The Issue Before the Trial Court Was the Sufficiency of a Description of Property Mortgaged. The Law in This State Holds Third Party Creditors Are Considered to Have "Notice" of All Information "Which They Could Have Acquired Through Reasonable Inquiry at Sources Suggested by the Instrument." Therefore, Where There Is Ample Evidence That Creditors Had "Notice" That There Was Information in an Escrow File Which Helped Complete the Description, the Contents of Said File, Including Inventory Lists, Are Admissible and Relevant Evidence.

Respondents urge that there is no merit in appellant's contention on page 18 of his brief that it was error for the Referee to admit the inventory lists in evidence because "Nothing in the instrument itself suggests the existence of such inventory list or an inquiry which would lead to such list." (App. Br. p. 18.) Appellant then erroneously contends that the sole ground for the Referee's allowing the inventory lists in evidence was the fact that the instrument contained the address of the mortgagor. (App. Br. p. 18.) If appellant would read the Referee's statements immediately following those quoted by appellant he would not have made such a claim. In actuality, the Referee ruled that the inventory lists were relevant because he found that the instrument itself contained the name and business address of the mortgagor, the name and address of the mortgagee, the location and general description of the chattels mortgaged, and the names and addresses of the president and vice president of the mortgagor and an inquiry at any of these places would have revealed the existence of the inventory list.

The Referee had in mind every one of these sources of information when he ruled in favor of admissibility of the inventory lists. [See Tr. p. 62-63.] Clearly the trustee in bankruptcy should be treated as having knowledge of the contents of the inventory lists since they contained information which could have been acquired through reasonable inquiry at sources suggested by the instrument. The inventory lists were therefore properly admitted in evidence.

POINT VIII.

The Preferred Definition of the Word "Certain" Is "Ascertained; Precise; Definitive; . . . or, in Law, Capable of Being Identified or Made Known, Without Liability to Mistake or Ambiguity, From Data Already Given," and This Definition Should Be Used in This Case.

Appellant makes some point about the use of the word "Certain" in the property description on page 19 of his brief. He cites two cases based on Pennsylvania Law which were decided more than twenty years ago, and which are distinguishable on their facts, as his authority that the use of the term "certain" somehow makes the description indefinite. Respondents will first discuss and distinguish the cases relied on by appellant, *In Re Mineral Lac Paint Co.* (D. C., E. D. Pa. 1936), 17 Fed. Supp. 1, and *In Re Smith* (D. C., E. D. Pa., 1937), 19 Fed. Supp. 597, and then discuss the California cases and preferred dictionary definitions, all of which support respondents' position.

In the *Smith* case the conditional sales contract contained a description which was "little more than a jumble of words and figures." *In Re Smith, supra,* at p. 598. The

contract also referred to an attached copy of the description of the property sold but no description was attached. The court therefore held the description inadequate. The *Smith* case did not discuss the meaning of the word "certain."

In the *Mineral Lac* case, the conditional sales contract contained the following description:

> ". . . certain machinery, apparatus, plant and equipment now upon premises 3306-16 E. Thompson Street, Philadelphia, Pennsylvania, described in a schedule hereto annexed, made part hereof, and referred to as Exhibit 'A'."

The schedule referred to as Exhibit "A" was not annexed to the conditional sales contract as filed of record. To the extent that the decision invalidated the conditional sales contract as against the Trustee in Bankruptcy because of a faulty description (there were other additional reasons for the conclusion reached), it resulted from the incompleteness of the conditional sales contract because of failure to attach the schedule. The Court went on, however, to point out that:

> ". . . its [the schedules] omission is not cured by the brief general reference to the machinery and equipment sold contained in the portion of the contract above quoted, since that language is not sufficiently precise or definite, *particularly in view of the testimony that other similar machinery and equipment was located upon the premises mentioned.* We think that the word 'certain,' used in referring to the machinery and equipment in the part of the contract which we have quoted, followed as it is stated to be by a detailed description (which was not in fact attached), was used in the sense of 'some among pos-

> sible others.' Webster's New International Dictionary of the English Language (2nd Ed.) Unabridged, p. 440, definition 2b . . . Regardless of this, however, the failure to include a schedule containing a description of the machinery and equipment sold, which schedule the contract itself expressly stipulates to be a part of it, in our opinion amounts to the omission of a material part of the contract . . ." (Emphasis added.)

In the case at bar, the Chattel Mortgage does not refer to an exhibit or schedule attached, which, in fact, was not attached. Therefore, the *Smith* and *Mineral Lac* cases are distinguishable on their facts in that regard.

Further, there is no testimony, or other eivdence, whatsoever in the case at bar that similar machinery and equipment were located on the premises other than that covered by the Chattel Mortgage, whereas, from the above quoted portion of the opinion, there was such in the *Mineral Lac* case. In this respect, also, the cases are distinguishable upon the facts. It obviously was *only* because of the evidence showing the existence of similar property not covered by the conditional sales contract that the Court in *Mineral Lac* adopted the definition of "certain" from Webster reading "some among possible others." The Court specifically said so.

Actually, the definition of the word "certain" from Webster's New International Dictionary (2d Ed.) Unabridged, 1948, reads as follows:

> *"1.a* Fixed or stated; settled; determinate.
>
> *"b* Precise; exact;
>
> *"2.a* Implied or thought of as specific though not named."

Then comes definition 2.b, referred to in the *Mineral Lac* case and relied upon by the Trustee herein:

> *"2.b* One or some among possible others; one or some known only as of a specified name or character; as, *certain* leaders of the people;—often used derogatorily; as, a *certain* Mr. Washington was elected President."

Had the conditional sales contract not referred to a schedule attached, and had there been no testimony concerning the existence of similar machinery on the premises, the obviously preferred definition of "certain," *i.e.*, "fixed or stated; settled; determinate," would have prevailed.

It is to be noted, further, that, in the *Mineral Lac* case the description was not "all that certain property," but was merely "certain property." In the case at bar, the language was "all that certain personal property situated and described as follows, to-wit: Certain fixtures, machinery and tooling equipment, and located at 224 East Palmer Avenue, in the City of Compton, State of California."

If the preferred definition of "certain" is used, then the description in the Chattel Mortgage in the case at bar reads: *"All that fixed, stated, settled, and determinate personal property situated and described as follows, to-wit: Fixed, stated, settled and determinate fixtures, machinery, and tooling equipment, and located at 224 East Palmer Avenue, in the City of Compton, State of California."* This would advise anyone searching the records that by inquiry the precise items of property covered by the Chattel Mortgage could be ascertained.

The Referee ruled in favor of respondents as follows:

"Now, if as Mr. Shutan has rhetorically inquired, it had said 'some' or 'part,' then the Court's ruling on this point which we make simply for the purpose of identification, referred to as point one, would have to be different because there it would indicate something less then the whole. If it said 'some' or a 'portion' or a 'part,' thereof, there is some doubt as to the construction to be placed on this word 'certain.'

"But I hold that in a technical statute such as we have here, and in a proceeding such as we have here, the doubt must be resolved in favor of the one who has the equitable side of the case, which in this case is the mortgagee.

"Now, if we had a lawsuit where somebody had purchased some of the fixtures, machinery and equipment for an adequate consideration upon the advise, for instance, of an attorney that this mortgage by its terms did not cover the items purchased, then we would have a different equitable situation. But in a case such as we have here where this point has come up because of the filing of an involuntary petition in bankruptcy and the subsequent adjudication, which vested in the Trustee, the rights, remedies and powers of a lien of a creditor holding a lien by legal or equitable proceeding, I hold that where doubt exists the mortgage should be resolved in favor of the mortgagee.

"Now, this is the doubt—does the word 'certain' mean 'some' or does it in this case mean 'all'? We have the word 'certain' twice. It says, 'the Mortgagor mortgages to the Mortgagee all that certain

personal property.' Now, what is meant by that 'certain'? That means all of the property described after the words 'to-wit,' because it says he mortgages 'all that certain personal property situated and described as follows, to-wit.' Of course, there you have the interposition of the word 'all," and that tends, of course, to clarify the meaning of the word 'certain.' This word 'certain' can mean, as I say, either a part or portion, or it can be a word of description, namely, it could mean and it could be the equivalent, even, of the word 'the.'

"It could be read this way—'That the Mortgagor mortgages to the Mortgagee all that certain personal property situated and described as follows, to-wit: the fixtures, machinery and tooling equipment located at 224 East Palmer Avenue." [Tr. pp. 61-62.]

The preferred definition of the term "certain" is confirmed by other authorities:

Schmidt v. Klipfel, 59 Cal. App. 2d 197, wherein it was held that the words "certain chattel mortgages" in the title of a moratorium act referred to "all" chattel mortgages rather than to only chattel mortgages attached to real property.

Martin v. Bell, 18 N. J. Law 167, wherein it is held that the words "as security for certain notes we hold of others," as used in a promissory note, meant "all" of the notes held.

Black's Law Dictionary (3d Ed.), 1933, which defines "certain" as follows:

"Certain. Ascertained; precise; identified; definitive; clearly known; unambiguous; or, in law, capa-

ble of being identified or made known, without liability to mistake or ambiguity, from data already given. [Citation omitted.]"

It seems clear that the Referee and District Court's ruling on the meaning of the word "certain" as used in the description in the chattel mortgage at bar should be affirmed.

Conclusion.

Respondents urge that the Referee's Findings of Fact were fully supported by the evidence. Respondents also urge that the Referee and the United States District Court correctly applied California Law in all respects. Therefore, respondents respectfully submit that the Referee's decision and the District Court's affirmance of that decision should be affirmed in all respects.

Respectfully submitted,

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